S.B.CIVIL WRIT PETITION NO.4004/2003

Nand Ram Sharma
Vs.
State of Rajasthan & Anr.

DATE OF ORDER :: 24th July, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Kamal Joshi, for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate.

....

By order dated 15.6.1995 the Collector (Land Records), Sriganganagar while exercising powers under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "the Rules of 1958") imposed a penalty of stoppage of two annual grade increments without cumulative effect upon the petitioner by holding him guilty for violation of provisions of Rule 12(1) of the Rajasthan Land Revenue (Land Records) Rules, 1957 (hereinafter referred to as "the Rules of 1957"). An appeal preferred under Rule 23 by the petitioner before Divisional Commissioner, Bikaner also stood rejected by order dated 13.8.1996. The revision petition preferred before the Governor of Rajasthan being aggrieved by the orders referred above also stood rejected by an order dated 24.8.2002. Hence this petition for writ is filed.

In brief, the factual matrix of the case is that a memorandum dated 30.4.1992 under Rule 16 of the Rules of 1958 was served upon the petitioner alongwith

a charge sheet alleging that the petitioner was found absent from the headquarters of Patwar Mandal on 21.8.1991 and 22.8.1991 while holding the office of patwari, Patwar Mandal, Rawla “D”, Tehsil Ghadsana and this proves that he is not residing at the headquarters of the patwar circle as required under Rule 12(1) of the Rules of 1957. The petitioner in response to the memorandum dated 30.4.1992 submitted an explanation in writing stating therein that the headquarter of Patwar Mandal, Rawla “D” is at 10 KPD and not at chak 26, 27 RJD and on 21st and 22nd August, 1991 he was working at 10 KPD. The petitioner accordingly made a request to drop the proceedings sought to be initiated under the memorandum dated 30.4.1992.

The disciplinary authority decided to proceed against the petitioner under Rule 17 of the Rules of 1958, therefore, only by considering the explanation submitted by the petitioner the order impugned was passed penalising the petitioner by stoppage of two annual grade increments without cumulative effect.

While giving challenge to the orders impugned it is contended by counsel for the petitioner that there is no foundation even to charge the petitioner for violating the provisions of Rule 12(1) of the Rajasthan Land Revenue (Land Record) Rules, 1957 (hereinafter referred to as”the Rules of 1957”) as the

Headquarter of the Patwar Circle Rawla “D” is at 10 KPD, where the petitioner was discharging his duties on 21st and 22nd of August, 1991. There was no occasion for the petitioner to be available at chak 26, 27 RJD. It is urged by counsel for the petitioner that the disciplinary authority, the appellate authority as well as the revisional authority failed to appreciate this aspect of the matter while adjudicating the charge.

Per contra, counsel for the respondents while defending the orders impugned emphasised that there is concurrent findings of three authorities that does not warrant interference of this Court under Article 226 of the Constitution of India. It is further stated that there was certain complaints against the petitioner from the villagers and the agriculturists and by acting upon that an inspection was made and the petitioner was not found on 21st and 22nd August, 1991 at the headquarters of patwar circle, Rawla “D”.

Heard counsel for the parties.

The petitioner was charged for violation of Rule 12(1) of the Rules of 1957, that reads as under:-

> “12.Obligation of residence.-(i)Patwari shall reside within his circle in the village specified by the Collector to be his

> headquarter unless he has obtained a written permission from the Collector to reside outside his circle. No Patwari shall, however, be allowed to reside at a place beyond a radius of 3 miles from the limits of his circle except under very special circumstances."

From reading of provisions above, it is apparent that it relates to residence of patwari at the headquarter of patwar circle specified by the Collector. Clause(1) of Rule 12 of the Rules of 1957 is nothing to do with availability of patwari at patwar circle all the time of his working hours.

In the instant matter the petitioner while meeting with the allegations levelled against him in quite unambiguous terms stated that the headquarter of patwar circle as specified by the Collector is 10 KPD and not chak 26, 27 RJD and on 21st and 22nd August, 1991 he was working at 10 KPD i.e. headquarter of patwar circle. The statement of the petitioner is not at all taken into consideration by the disciplinary authority. The appellate authority as well as the revisional authority also failed to deal with the specific assertion made by the petitioner with regard to his availability at the headquarters of patwar circle. It is further pertinent to note that there was no evidence available on basis of that it could be presumed that the petitioner was not residing at the

headquarter of patwar circle, as such the finding for violation of Rule 12(1) of the Rules of 1957 is absolutely ill-founded.

The writ petition, therefore, deserves acceptance. The same, therefore, is allowed. The orders impugned dated 15.6.1995 passed by the Collector (Land Records), Sriganganagar; dated 13.8.1996 passed by Divisional Commissioner, Bikaner and the order dated 24.8.2002 passed by the revisional authority are hereby quashed.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.